

REMARKS

Claims 68, 69, 71, 72, 75-87 and 89-91 are pending. Claims 70, 73, 74 and 88 were canceled in this Amendment. Claim 91 is independent and is newly-presented. Independent claim 91 claims a system with a mask as defined in claim 68. Support for this claim 91 is provided in Figure 3, along with the associated description thereof.

Claims 68, 69, 77, 81 and 84 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by United States Patent No. 1,445,010 to Feinberg. Claims 75, 76, 78 and 90 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Feinberg in view of United States Patent No. 6,012,455 to Goldstein. Reconsideration and withdrawal of these rejections is requested.

Independent claims 68 and 90 have been amended to specify, and new independent claim 91 specifies, “an outer flap adapted to conform to the user’s mouth and in fluid connection with said elbow connector, said outer flap sealing around the user’s mouth, said outer flap defining a gases space around the user’s mouth and capable of delivering said gases from said elbow connector to the user’s oral passage”.

Feinberg discloses a swimming mask with an outer flange sitting against a user’s face, an elongated flange placed in the mouth, delivering gases to a person’s mouth, tubular extensions extending from the outer flange to engage the nostrils, and a fixed elbow delivering gases to the outer flange.

Feinberg does not seal around the mouth of the user and no gases space is present around the user’s mouth as is specified in amended independent claims 68 and 90. Feinberg only discloses a flat “outer flap” that rests against the user’s face with no enclosed gases space. The

“outer flap” of Feinberg does not have any shape to it and so cannot conform to the user’s face to form a seal. Further, there is no cushion or other mechanism (for example, headgear) that pulls the “outer flap” of Feinberg close to the face to form a seal. The addition of Goldstein does not overcome the deficiencies in Feinberg.

Therefore, Applicants submit that independent claim 68, and new independent claim 91, are not anticipated by Feinberg and independent claim 90, and new independent claim 91, are not rendered obvious by Feinberg in view of Goldstein and therefore, are allowable. Withdrawal of the rejection and allowance of these claims is requested.

Claims 69, 77, 81 and 84 are dependent upon independent claim 68 which Applicants submit is allowable. Therefore, claims 69, 77, 81 and 84 are allowable. Reconsideration and allowance is requested.

Claim 72 was under 35 U.S.C. §103 as allegedly being unpatentable over Feinberg in view of Robertson and further in view of Daniell et al., and further in view of United States Published Application No. 2003/0196662 to Ging et al. Claims 79, 80, 82 and 83 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Feinberg in view of Robertson. Claims 72, 79, 80, 82 and 83 are dependent upon independent claim 68 which Applicants submit is allowable. Therefore, claims 72, 79, 80, 82 and 83 are allowable. Reconsideration and allowance is requested.

Claims 85-87 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Feinberg in view of Goldstein. Reconsideration and withdrawal of this rejection is requested.

Independent claim 85 specifies “an outer flap adapted to conform to the user’s mouth and in fluid connection with said elbow connector, said outer flap providing a substantial seal about

the outside of the user's mouth and capable of delivering said gases from said elbow connector to the user's oral passage; . . . and nasal cannula extension mechanism adapted to allow said nasal cannula to adjustably extend from one of said elbow connector and said outer flap."

The combination of Feinberg and Goldstein does not result in a mask with nasal cannula having an adjustment mechanism that allows the cannula to adjustably extend as specified in independent claim 85. Furthermore, the combination of Feinberg in view of Goldstein will not result in a mask that provides a substantial seal about the outside of the user's mouth as specified in independent claim 85.

Goldstein discloses a plate 94 with notches 96 and 98 in it. The nasal cannulae with hoses attach into the notches and are removable from the notches. The attachment mechanism of Goldstein is not applicable to the mask of Feinberg because of the presence of the outer flap. If notches are cut into the outer flap to allow for an adjustment mechanism as described in Goldstein, then the outer flap cannot seal and hence the seal feature of claim 85 is not disclosed.

Therefore, Applicants submit that independent claim 85 is not rendered obvious by Feinberg in view of Goldstein and therefore, is allowable. Withdrawal of the rejection and allowance is requested.

Claims 86 and 87 are dependent upon independent claim 85 which Applicants submit is allowable. Therefore, claims 86 and 87 are allowable. Reconsideration and allowance is requested.

Claims 71 and 89 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Feinberg in view of Robertson and further in view of EP 0845277 A2 to Daniell et al. Reconsideration and withdrawal of this rejection is requested.

Claim 71 specifies "said elbow connector having an outlet vent to allow diffusion of the user's exhaled gases" and independent claim 89 specifies "an outlet vent on said elbow connector to allow diffusion of the user's exhaled gases".


Feinberg discloses a swimming mask. It cannot be obvious to put vent holes onto the elbow of the swimming mask of Feinberg because placing vent holes on the elbow of that mask would place the user at grave risk of drowning. Therefore, Applicants submit that this rejection must be withdrawn. Reconsideration and allowance of claims 71 and 89 is requested.

A Petition for a Two-Month Extension of Time is concurrently filed herewith to extend the date for response up to and including May 28, 2010.

Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

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